

Gustavo T. Villanueva (PROSE)
 1301 Cougar Creek Drive
 Patterson, California 95363
 U.S.A.
 (408) 655-8990

Plaintiff

FILED ADR

2008 FEB 25 P 1:01

RICHARD W. WIEKING
 CLERK
 U.S. DISTRICT COURT
 N.D. DIST. OF CA. S.J.

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

33

Gustavo T. Villanueva,)	No. C07 05721 JW
Plaintiff,)	
)	
v.)	REQUEST TO
)	RECONSIDER MOTION
Condoleezza Rice as Secretary of the)	FOR DEFAULT JUDGMENT
United States Department of State,)	AND PERMANENT
Maura Harty, Consuelo Pachon,)	INJUNCTION
and Kevin Lewis Spriggs)	
Defendants.)	

1. The Plaintiff, acting as *pro se*, submitted to this court a Request for Default Judgment and Permanent Injunction on January 28th, 2008 (see docket No. 23). Due to the nature and stile in which the request was written, the Plaintiff's request was entered as a Motion for Default Judgment (see docket No. 24).
2. Rule 55(a) states that the Clerk of the Court shall make an entry on the case docket indicating a Default made by a party in the case, therefore The Motion to Dismiss was correctly denied by Honorable James Ware because no entry of default was found in this case docket. Plaintiff resubmitted a request for entry of default to the Clerk of the Court (see docket No. 30). The Clerk of the Court entered a Clerk's Notice Entry of Default as to Defendants in this case on February 21st, 2008 (see docket No. 31).

- 1 3. The Plaintiff understands how the clerical error was made when filing
2 his request and apologizes to this Court for such error. Therefore,
3 the Plaintiff respectfully requests this Court to reconsider his Motion
4 for Default Judgment and Permanent Injunction.
5
- 6 4. Pursuant to Federal Rules of Civil Procedure, Rule 55(e), a judgment
7 against the United States "shall be entered against the United States or
8 an officer or agency thereof" if "the claimant establishes a claim or
9 right to relief by evidence satisfactory to the court."
10
- 11 5. Defendants have failed to plead or otherwise defend the Amended
12 Action to Established U.S. Citizenship ("Amended Action" or
13 "Action") filed by the Plaintiff in this court by the timeline established
14 by the Clerk of the Court (see docket No. 31).
15
- 16 6. The Plaintiff has proven that he was born in territory of the United
17 States before a court in the United States in 1992 and therefore he has
18 been considered a citizen of the United States; such proof has been
19 provided to this Court through his official U.S. birth certificate which
20 is one of the enclosures contained in Exhibit A¹. Plaintiff has made
21 his claim of his fact of birth in this Court through a claim successfully
22 asserted in court proceedings before a United States Superior Court
23 that had the proper jurisdiction to establish the facts of the Plaintiff's
24 birth and that concluded that he is indeed an individual born in the
25 United States.
26
- 27 7. The Superior Court of California had jurisdiction in establishing the
28 Plaintiff's facts surrounding his birth and had proper authority to
29 make such decisions of fact conclusory. Furthermore, Federal and
30 State legislation have conferred the authority to State Courts to decide
31 facts of birth of U.S. born citizens.
32
- 33 8. The core of this Action is focused in whether an Official Birth
34 Certificate issued by the agency entrusted to issue a birth certificate,
35 which is an official document commonly used to prove identity and
36 citizenship, can be invalidated by another agency entrusted to issue
37 passports and not birth certificates. This action also focuses on
38

39
40 ¹ Exhibit A has an enclosure with a copy of Plaintiff's official U.S. birth certificate. The Plaintiff's original birth certificate was held by the United States Court of Appeals of the Ninth Circuit in case No. 0771779.

whether the Defendants have the authority to overturn decisions of fact made by the Superior Court of California.

9. The Constitution of the United States is the supreme law of the land, the nation's most fundamental law. The language contained in the Constitution is illuminated by the principles set forth in the Declaration of Independence which the Founders outlined their moral vision and the government they implied. Thus the cardinal moral truths set in our declaration of independence are these:
10. *That all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these Rights, Governments are instituted by Men, deriving their just Powers from Consent of the Governed.*²
11. The first written lines contained in the United States Constitution are powerful and describe without doubt the intention and the purpose to create a Constitution that would guarantee the vision given in the Declaration of Independence. Our constitution starts by first empowering the people of the United States, whether citizens or not, to establish the basic and most fundamental rules of law required to have a form of federal government that unites States.
12. *We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*
13. The United States Constitution is simple and elegant. The constitution establishes the jurisdiction of the three governmental powers in the United States. The Constitution also establishes the limits of such powers. The U.S. Constitution establishes the extent in which each governmental power can govern. The Constitution was careful in its wording to include or exclude certain groups of people

² Historians have argued that this philosophical standing is derived from works from Plato in "The Republic", the "Magna Carta" and Thomas Paine's "Common Sense" among others.

from their functions and powers; as an example, the Constitution contains references to *individuals*, *citizens*, and *the people*. These three concepts did not need explaining because they were easily understood by the Framers who wrote the Constitution.

14. The Plaintiff has argued in his Amended Action how the Defendants violated the Constitution of the United States, in particular the constitutional laws regarding “*the full faith and credit*” clause and the prohibition for the government to create “*ex post facto*” laws.

15. However, Defendants have not confronted the allegations and have rather concentrated in pointing out their interpretation of the Constitution to distract this court from the alleged violations. Defendants have made clear to this court that the United States does not have to comply with a constitutional law that—as interpreted by the Defendants—was meant to be followed only by the States³ (see docket No. 24). Defendants consider that the States are not part of the United States and the United States refers only to the federal government.

16. The meaning of the United States was established for the first time in the Declaration of Independence on July 4th, 1776 as follows: *The unanimous Declaration of the thirteen united States of America* (emphasis added). This declaration references that to dissolve the “*Tirany over these States*” over the “*population of these States*” and “*Inhabitants of these States*” from England, the people living in such States were forced to create the concept of the United States of America⁴. The United States is the concept of a union of free and independent States.

³ Defendants rationalize their concept that States are only the 50 States of the Union excluding the Federal State.

⁴ The Declaration of Independence last paragraph: *WE, THEREFORE, the representatives of the UNITED STATES OF AMERICA, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be FREE AND INDEPENDENT STATES; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.*

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17. The concept of *States* and interpretation given in the U.S. Constitution has been amplified or refined by the courts through the history of the United States. States are not longer just the Free States that are mentioned in the Declaration of Independence. In fact, a more general definition has been given by the judiciary when Federal Courts have given full faith and credit to State Courts, other Federal Courts, International Courts, and Foreign Courts that practice common law, to make decisions in cases relating to paternity, custody, murder, taxation, birth, real property, etc. Currently, the meaning of States as seen by the judiciary is of a form of government such as Federal State, State, Foreign State, etc.
18. More recently the full faith and credit doctrine has been stated in a very mitigated form, the Court saying that where statute or policy of the forum State is set up as a defense to a suit brought under the statute of another State or territory, or where a foreign statute is set up as a defense to a suit or proceedings under a local statute, the conflict is to be resolved by appraising the governmental interest of each jurisdiction and deciding accordingly⁵. The State of California issues official birth certificates to individuals that have successfully asserted such claim in the Superior Court through a judicial process that is in line with Federal and State mandate. The Plaintiff argues that under this condition, the federal government is bound to uphold the decisions made by the State of California regarding the Plaintiff's fact of birth by giving full faith and credit to his official U.S. birth certificate.
19. Another central issue in this case, is the manner in which the Plaintiff was forced to help the Defendants obtain incriminating evidence to be used to deny him of his passport replacement. The Plaintiff has demonstrated in his Amended Action that such evidence was obtained by the Defendants through deception and lies. Defendants did not act in good faith through a regulated administrative process.
20. Soon after the constitution was proposed, the Framers foresaw the need to create the Bills of Rights because they were afraid that the

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⁵ Alaska Packers Ass'n. v. Industrial Accident Comm'n, 294 U.S. 532 (1935); Bradford Elec. Co. v. Clapper, 286 U.S. 145 (1932).

1 power conferred to the new Federal Government by the People of the
2 United States, had the potential to become a despotic government with
3 the ability to create a new feudal system, with rigid class system
4 dominated by reactionary and hereditary autocracy controlled by the
5 church. The Framers were afraid of a federal unfair government.
6

- 7 21. The Framers saw the need to ensure that the Federal Government was
8 not going to encroach into People's basic rights and impose limits on
9 the Federal Government through a series of thoughtful measures.
10 Most importantly, the heated debates among all Framers during the
11 Federal Convention of 1787 were geared in part to ensure that the new
12 federal government was not going to ignore or take away the power
13 and independence that each State had and so hardly fought to obtain
14 during the war for independence. Therefore the ratified Constitution
15 of the United States and the Bill of Rights as we know them now went
16 through a series of revisions and careful thought.
17
- 18 22. The need to create a judiciary with enough power to make their final
19 judgments stand was one of the core ideas of the Constitution. The
20 idea to adopt the principles of law contained in the Constitution is
21 based in the belief that a Federal Government through the powers
22 given by the people of each state by a constitution was going to create
23 a Unified Nation. The principle behind the Constitution is to create a
24 government with the ability or power to prevent chaos among the
25 States.
26
- 27 23. The argument expressed above is with the intention to accentuate the
28 fact that our Constitution is still alive, and that some of the laws
29 contained in the Constitution as well as in the Bills of Rights are
30 applicable to this case and overpower any significant contradictory
31 law created by the Defendants.
32
- 33 24. The Plaintiff has experienced that proper adjudication of a State Court
34 in a matter relating to birth is not always accepted by every
35 government agency because some federal agencies do not fully
36 recognize the power and legitimacy of the Court System. This
37 observation is not new, it was observed by the Framers of the
38 Constitution. General Alexander Hamilton wrote that,
39
40

- 1 25. *"[T]he judiciary is beyond comparison the weakest of the three*
2 *departments of power...I agree that "there is no liberty, if the*
3 *power of judging be not separated from the legislative and*
4 *executive powers."...nothing can contribute so much to its*
5 *firmness and independence...this quality may therefore be justly*
6 *regarded as an indispensable ingredient in its constitution; and*
7 *in a great measure as the citadel of the public justice and the*
8 *public security...The complete independence of the courts of*
9 *justice is peculiarly essential...the legislative authority...shall*
10 *pass no bills of attainder, no ex post facto laws, and the like.*
11 *Limitations of this kind can be preserved in practice no other*
12 *way than through the medium of the courts of justice; whose*
13 *duty it must be to declare all acts contrary to the manifest tenor*
14 *of the constitution void. Without this, all the reservations of*
15 *particular rights or privileges would amount to nothing."* (See
16 Alexander Hamilton, *The Federalist Papers*, No. 78, *A view of*
17 *the constitution of the judicial department in relation to the*
18 *tenure of good behavior*, 1787).
19
- 20 26. The Plaintiff agrees with Alexander Hamilton that the Courts of
21 Justice must have an inflexible and uniform adherence to the rights of
22 the constitution, and of the individuals. The claim and facts contained
23 in the Plaintiff's U.S. birth certificate are protected by the full faith
24 and credit clause found in the United States Constitution because (1)
25 the claims stated therein were adjudicated by a sitting judge of the
26 United States Superior Court of California in Santa Clara County; (2)
27 the U.S. birth certificate is an official vital record issued by a State;
28 and (3) Defendants have not provided this court or any court in that
29 matter with any preponderance of evidence that would legally
30 disprove in court the Plaintiff's claim. Furthermore, Plaintiff has been
31 declared by Defendants a non U.S. citizen which directly contradicts
32 prior findings made by them and the findings of other federal agencies
33 that have declared the Plaintiff a U.S. citizen since 1992 and that have
34 performed extensive security clearance investigations and that are
35 experts and experienced in detecting issues of fraud.
36
- 37 27. Plaintiff has tried to come to a legal resolution with the Defendants
38 through their appointed counsel; a resolution that would guarantee the
39 Plaintiff from enjoying his right to freely travel internationally and
40 regain the rights that have been taken unlawfully from him. However,

1 the Plaintiff has unsuccessfully come to a resolution to his case
2 because Defendants have express the need to continue to object to the
3 validity and truthfulness of all the facts contained in an official U.S.
4 birth certificate. Defendant's accusations and rhetoric have now
5 escalated to imply the possibility that the Plaintiff may not be his
6 mother's son.

7
8 28. The controversy surrounding this case is based on that the plaintiff
9 obtained his U.S. birth certificate at the age of 22; therefore,
10 Defendants have declared his claim without proof as questionable
11 through the guidelines of the Defendants' long-standing policy to
12 invalidate some birth certificates. Such policy was codified into law
13 and appears in the Code of Federal Regulations (see 22 C.F.R. 51.43).
14 The plaintiff argues that such a regulation is an *ex post facto* law. In
15 accordance to the Defendant's policy, facts that were proven in open
16 court must be proven again even if there is no concrete evidence that
17 such claim is fraudulent; thus, making the Defendants' action to
18 invalidate a court decision an action with double jeopardy
19 consequences.

20
21 29. Defendants long-standing policy to invalidate the facts contained in
22 official belated birth certificates have questioned the prudence and
23 jurisdiction of a Superior Court judge who determined that (1) the
24 Plaintiff's birth occurred in Santa Rosa, California; (2) the
25 determination of a United States Court Judge that the Plaintiff's
26 Mexican birth certificate was irrelevant in proving the true facts of the
27 Plaintiff's birth; and (3) questioned the ability that a sitting judge has
28 in evaluating evidence and performing cross-examinations of
29 witnesses' testimony. Defendants actions make it impossible for the
30 people of the United States to rely on decisions made by the Superior
31 Court of California unless there is an injunction from this Court that
32 would assert that State courts have the power to make decisions of
33 fact.

34
35 30. Therefore, Defendants have concluded that an adjudication of facts
36 performed by a Superior Court Judge is not sufficient to give validity
37 of an official birth certificate to prove the facts stated therein.
38 Defendants strongly believe and therefore concluded that facts
39 determined to be true by a State Court have no relevance in the
40 determination of truth regarding place of birth and therefore must be

1 reviewed by their administrative process because as Defendants
2 actions indicate, a Passport Agency can perform such a process of
3 adjudication better than a judge and better than other federal executive
4 agencies.

- 5
- 6 31. Defendants are violating Constitutional Law by denying without proof
7 or cause the facts already established in a United States Court and
8 labeling them as questionable just because such facts were made
9 proven and established several years after the birth of a person.
10 Defendants have wrongly stated that the authority to invalidate the
11 evidentiary value of belated official birth certificates is given by their
12 long-standing policy to question any adjudication made on the facts of
13 a birth after a certain period of time.
- 14
- 15 32. Defendant's actions are driven primarily in their predisposition of
16 suspicion of wrongdoing on cases where a birth certificate is issued to
17 anyone over the age of five for some adjudicators or over the age of
18 one to other adjudicators. This long-standing departmental policy is
19 more in line with McCarthyism, a doctrine contrary to moral
20 reasoning, legal authority, legal equity, right reason and civility.
- 21
- 22 33. Defendants have indicated that their adjudication of U.S. Citizenship
23 overpasses the adjudication of a State Court or other federal agencies
24 because Defendants are the only agency entrusted to issue U.S.
25 Passports. Defendants' policy affects millions of U.S. born citizens
26 that for many different reasons have sought relief before a State Court
27 because their birth certificates have the wrong information, were lost,
28 never recorder or never filed. In this case, the Plaintiff, a two-time-
29 war-veteran who has exposed his life to the defense of the United
30 States against all enemies, foreign or domestic, has been denied the
31 freedom to travel internationally for business or to visit his family
32 since 2005. In addition, Defendants defamatory allegations that
33 Plaintiff is a Mexican citizen has created a cloud of suspicion over the
34 Plaintiff and partially destroyed the trust that he has worked so hard to
35 attain. Defendants' actions have incapacitated the Plaintiff to perform
36 in military operations overseas.
- 37
- 38 34. The Plaintiff argues that under these circumstances Defendants have
39 no Existence of Meritorious Defense. Defendants are preemptively
40 challenging and invalidating facts that have already been established

1 in a United States Court proceeding and accepted by other federal
2 entities entrusted to make determinations and adjudication of U.S.
3 citizenship. Invalidating the facts contained in an official birth
4 certificate without proof or cause or denying a citizen of due process
5 that has the potential to deport individuals from their legitimate
6 country is illegal. The level of accusations made by the Defendants
7 surpass mere administrative finding and therefore must be reviewed
8 by the judiciary because it has the potential to fester abuse of power.
9

10 35. Defendants' policy to invalidate official birth certificates that are
11 created few years after the birth of an individual is unsound and
12 diverts from Constitutional law. Defendants have neither been legally
13 entrusted nor given the power to overturn court decisions nor given
14 the authority to invalidate official birth certificates that can be
15 validated or verified by the agency entrusted to issue such
16 documentation. Defendants' regulations pertaining to invalidate
17 official belated birth certificates have illegally overextended
18 Defendants' jurisdictional authority and are in direct violation to
19 Constitutional Law because legal authority at the Department of State
20 ends in granting, issuing and verifying U.S. passports.
21


22 36. Defendants did not show any justification for delaying the answer to
23 the Action and did not place doubts in favor or against the Plaintiff
24 who is seeking relief from this Court. Defendants simply ignored the
25 Summons issued by this court to answer the Action against them by
26 the time imposed by this court in the same manner that Defendants are
27 ignoring the findings of fact made by the Superior Court of California
28 regarding the facts surrounding the Plaintiff's birth. Defendants
29 rhetoric has no legal grounds and in their Motion to Dismiss
30 submitted in this court several days after the timeline imposed by this
31 court it has been suggested to further delay this case. Defendants are
32 willing to keep attacking the credibility of the Plaintiff and forcing the
33 issue to wait another year or more. To the Plaintiff, this could
34 become a disaster since this case has disrupted his life in a significant
35 manner.
36

37 37. The Plaintiff main interest of justice would be best served by
38 obtaining a decision on the merits of his case. The Plaintiff has tried
39 to seek relief in a matter that has consumed his everyday life since
40 2005 and put him and his family under unnecessary stress. The

1 Plaintiff argues that under these circumstances, and Defendants
2 inexcusable conduct to not show a meritorious defense should be
3 taken under consideration by this Court.
4

- 5 38. Defendants enjoy with the unusual resources necessary to answer an
6 Action in a timely manner. Each Defendant has been aware of the
7 allegations against them since the time Plaintiff filed an action against
8 them in the Court of Appeals of the 9th Circuit on August 2007.
9 Defendants have been represented by several lawyers with the ability
10 to answer the Action without missing any timeline.
11
- 12 39. It is in the best interest of the Plaintiff and the public affected by the
13 Defendants' policy that invalidates their birth certificates to have this
14 Court make a decision on this case without any further delay. The
15 Plaintiff has filed an extensive action before this court to help the
16 Court make a judgment on the merits of the evidence. Defendants
17 should not be allowed to illegally deny the citizenship of Americans
18 through an implementation of a policy which is based on fear and
19 prejudicial misconceptions. Such policy does nothing but to cause
20 chaos in the judiciary as well as among other federal and state
21 agencies.
22
- 23 40. WHEREFORE, the Plaintiff respectfully requests this Court to make a
24 Default Judgment and Permanent Injunction against the Defendants
25 based on that there is no issue of fact in the claims made by Plaintiff
26 which are stated in his official U.S. birth certificate and because his
27 claim has been verified by a Judge entrusted to make facts of birth and
28 other federal agencies entrusted to make the determination of
29 citizenship. Furthermore, respectfully requests this Court to make a
30 Default Judgment and Permanent Injunction against the Defendants
31 based on the allegations contained herein and in the Amended Action
32 to Establish U.S. Citizenship filed by the Plaintiff in this Court.
33

34 RESPECTFULLY SUBMITTED,
35

36 
37 Gustavo T. Villanueva
38 1301 Cougar Creek Drive
39 Patterson, CA 95363
40

DATED: 24FEB2008

657 Gridley Street
San Jose, CA 95127

CERTIFICATE OF SERVICE

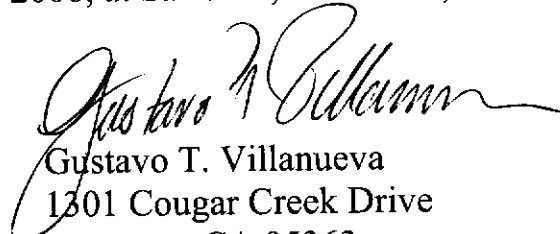
The undersigned hereby certifies that he is an employee of the United States Navy Reserve and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that he is causing a copy of the following:

**REQUEST TO RECONSIDER MOTION FOR DEFAULT
JUDGMENT AND PERMANENT INJUNCTION**

to be served this date upon the Defendant's counsel in this action by sending a true copy thereof through electronic mail as agreed by the parties to Ms. Claire Cormier (USACAN) at her email address [Claire.Cormier@usdoj.gov].

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 25th day of February, 2008, at San Jose, California,


Gustavo T. Villanueva
1301 Cougar Creek Drive
Patterson, CA 95363

DATED: 25FEB2008

657 Gridley Street
San Jose, CA 95127